

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CERIOUS McCRAY et al., :  
:   
Plaintiffs, : 12-CV-3950 (CS)  
:  
-against- : ORDER  
:  
COUNTY OF ORANGE et al., :  
:  
Defendants. :  
-----X

Seibel, J.

On January 29, 2013, by endorsement on a letter from defense counsel, I made several rulings. (Doc. 36.) They related to Plaintiff's Amended Complaint. (Doc. 34.) Unbeknownst to me at the time, Plaintiff had filed a Second Amended Complaint ("SAC") on January 15, 2013. (Doc. 37.) For reasons unknown to me, it was not docketed until January 31, 2013. Defense counsel was apparently unaware of it as well, because his letter described the operative Complaint as the Amended Complaint docketed as Doc. 34. (See Doc. 36.)

In light of the filing of the SAC, my Order dated January 29, 2013, (Doc. 36), is hereby VACATED.

With respect to the SAC:

- 1) The claims against the Town of Newburgh are dismissed for failure to allege facts plausibly suggesting that the individual Defendants' actions were undertaken pursuant to a municipal policy, practice or custom of the Town of Newburgh, as is required by *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978), and its progeny;
- 2) The claims against the County of Orange are dismissed for failure to allege any conduct by the County or its employees, let alone facts plausibly suggesting that the individual Defendants' actions undertaken pursuant to a municipal policy, practice or custom of the County of Orange, as is required by *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978), and its progeny; and
- 3) The remaining Defendants may move to dismiss by February 15, 2013, with Plaintiff's response due by March 18, 2013 and Defendants' reply due by April 1, 2013.

**SO ORDERED.**

Dated: February 1, 2013  
White Plains, New York

  
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CATHY SEIBEL, U.S.D.J.